

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8912 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MANIBHAI JETHABHAI VAGHELA

Versus

STATE OF GUJARAT

Appearance:

MR AJ PATEL for Petitioner

Mr. A.G.Uraizee for Respondent No. 1, 2

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 20/03/96

ORAL JUDGEMENT

By this petition under Article 226/227 of the Constitution of India, the petitioner has questioned the legality and validity of the order passed by the Collector, Sabarkantha, on 6.10.95 whereby he himself quashed his earlier order dated 6.9.90.

2. The petitioner has been the owner and occupier of

the agricultural lands bearing survey Nos.94 and 95 of village Balvantpura, Taluka Himatnagar, Dist: Sabarkantha which are hereinafter referred to as 'the disputed properties'. The petitioner purchased the disputed properties from one Mansinh Amarsinh Chauhan. The disputed lands were of restricted tenure lands which could not have been transferred except as provided under section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948 (Tenancy Act) and rule 25C of the Bombay Tenancy and Agricultural Lands Rules 1956 (Rules). The erstwhile owner Mansinh Amarsinh Chauhan wanted to sell the lands in dispute bonafide for non-agricultural purpose as he had incurred heavy debts. He, therefore, made application to the Collector, Sabarkantha for granting him permission under section 43 of the Tenancy Act and also under rule 25C of the Rules.

3. The Collector after considering the facts and circumstances of the case and the relevant documents granted permission to the erstwhile owner of the lands in dispute who had also paid an amount of Rs.75,422.20 ps. in the Government Treasury within the stipulated time. The Collector passed order on 15.9.90 giving permission to transfer the agricultural lands for non-agricultural purpose. By virtue of the said permission, the petitioner purchased the lands in dispute from the previous owner. The respondent No.2, Collector, Sabarkantha passed order taking the matter in suo motu review and without hearing the petitioner or his predecessor in title passed the impugned order. The respondent No.2, Collector took the view that there was no appropriate case under rule 25-C(1)(f) of the Rules and in view of the instructions from the Revenue Commissioner, the impugned order came to be passed. In other words, the Collector has observed in the impugned order that the permission to sell the agricultural property bonafide for non-agricultural purpose was not in accordance with the Rules. By passing the impugned order, the original position was ordered to be restored.

4. Section 43 of the Tenancy Act reads as under :

"43. Restriction on transfer of land purchased or sold under this Act.

(1) No land or any interest therein purchased by a tenant under sections 17B, 32, 32F, 32I, 32O, 32U, 431D or 88E or sold to any person under section 32P or 64 shall be transferred or shall be agreed by an instrument in writing to be transferred, by sale, gift, exchange, mortgage, lease or assignment, without the previous

sanction of the Collector and except in consideration of payment of such amount as the State Government may by general or special order determined and no such land or any interest, therein shall be partitioned without the previous sanction of the Collector.

(1A) The sanction under sub-section (1) shall be given by the Collector in such circumstances and subject to such conditions as may be prescribed by the State Government.

(AA) Notwithstanding anything contained in sub-section (1), it shall be lawful for such tenant or a person to mortgage or create a charge on his interests in the land in favour of the State Government in consideration of a loan advanced to him by the State Government under the Land Improvement Loans Act, 1983, the Agriculturists' Loans Act, 1984, or the Bombay Non-agriculturists' Loans Act, 1928, as in force in the State of Gujarat, or in favour of a bank or co-operative society, and without prejudice to any other remedy open to the State Government, bank or co-operative society, as the case may be, in the event of his making default in payment of such loan in accordance with the terms on which such loan was granted, it shall be lawful for the State Government, bank or co-operative society, as the case may be, to cause his interest in the land to be attached and sold and the proceeds to be applied in payment of such loan.

Explanation -- For the purposes of this sub-section, "bank" means --

- (a) the State Bank of India constituted under the State Bank of India Act, 1955;
- (b) any subsidiary bank as defined in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959;
- (c) any corresponding new bank as defined in clause (d) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970;
- (d) the Agricultural Refinance and Development Corporation, established under the Agricultural Refinance and Development Corporation Act, 1963.

(1B) Nothing in sub-section (1) or (1AA) shall apply to land purchased under section 32, 32F, 32-O or 64 by a permanent tenant thereof, if prior to the purchase, the permanent tenant, by usage, custom, agreement or decree or order of a court, held a transferable right in the tenancy of the land.

(2) Any transfer or partition, or any agreement of transfer, or any land or any interest therein in contravention of sub-section (1) shall be invalid."

It would be also interesting to refer to the relevant provisions of the Rules. Rule 25-C of the Rules reads as under :

"25-C. Circumstances in which and conditions subject to which sanction shall be given by the Collector under Sec.43 for transfer --

(1) The circumstances in which and the conditions subject to which the previous sanction of the Collector under sub-section (1) of sec. 43 may be given, shall be as follows, namely --

(a) that the land is required for an agricultural purpose by industrial or commercial undertaking in connection with any industrial commercial operations carried on by such undertakings;

(b) that the transfer is for the benefit of any educational or charitable institution duly registered under the Bombay Public Trust Act, 1950;

(c) that the land is required by a co-operative farming society;

(d) that the land is being sold in execution of a decree of a Civil Court or for the recovery of arrears of law revenue under the provisions of the Bombay Land Revenue Code, 1879;

(e) that the land is being sold bona fide for any non-agricultural purpose;

(f) that the land is being sold by land owner on the ground that --

- (i) he is in need of contracting his holding either for adequate finance or for intensive cultivation;
- (ii) he is permanently giving up the profession of agriculturist; or
- (iii) he is permanently rendered incapable of cultivating the land personally;

(g) that the land is being gifted in favour of-

- (i) the bodies or institutions mentioned in sec.88-A and clauses (a) and (b) of sub-section (1) of sec.88-B, or
- (ii) a member of the landowner's family;

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....."

5. The Collector in sou motu review found that the permission granted to the erstwhile owner of the disputed lands is contrary to the Rules and it was hit by the specific provisions of rule 25-C(1)(f). It appears that respondent No.2 Collector has failed to appreciate the facts and circumstances and the provisions contained in clause (e) of rule 25C(1) of the Rules. The permission was granted under clause (e) and not under clause (f) of section 25C(1) as contended by the learned Assistant Government Pleader. It could be very well seen from the aforesaid provisions contained in rule 25C(1)(e) that the Collector is empowered to accord permission for selling agricultural property for non-agricultural purpose on his being satisfied that the land is being sold bonafide for non-agricultural purpose. While passing the order, the predecessor in office of the respondent No.2, had considered the relevant proposition of law and the material facts as could be seen from the order dated 6.9.90. The impugned order is therefore, vulnerable and bad in law on the following grounds:

- (1) The respondent No.2 was not empowered to take the matter in sou motu review. No provision is pointed out under which the respondent No.2 could take up the order passed by his predecessor in sou motu review.
- (2) Assuming that review power is available, then also, the order could not have been passed

without affording an opportunity of hearing to the petitioner.

- (3) The impugned order is passed, as found from its plain tenor, on the basis of yadi and instruction received from the Revenue Commissioner. This is also highly objectionable and impermissible. Judicial or quasi-judicial authorities cannot pass order in such fashion under the instructions of higher-ups and that too in violation of the principles of audi alterem partem.

Having regard to the facts and circumstances, this Court has no hesitation in finding that the impugned order and the resultant subsequent orders recorded by the Collector are patently perverse and totally illegal requiring interference of this court in this petition. Therefore, the impugned order and the subsequent consequential orders are quashed and set aside and the order passed by the respondent No.2 Collector, Sabarkantha on 6.9.90 granting permission to the erstwhile owner predecessor in title of the petitioner, is ordered to be restored. The petition is allowed accordingly with costs.

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